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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re M.C. et al., Persons Coming Under
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

S.D.,

Defendant and Appellant.

G043795

(Super. Ct. Nos. DP018641,
DP018642)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Caryl A. Lee,
Judge. Affirmed.

Lisa A. DiGrazia, under appointment by the Court of Appeal, for Defendant
and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie
Torrez, Deputy County Counsel, for Plaintiff and Respondent.

Leslie A. Barry, under appointment by the Court of Appeal, for the Minors.

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S.D. (the mother) appeals from two orders of the trial court relating to this ongoing dependency matter. She first argues that the court erred by granting a restraining order, thereby suspending the mother's visitation, because there was not sufficient evidence her behavior threatened the safety of her daughters, teenagers Monique and M. (collectively the girls or the children). We disagree and conclude that the issuance of the restraining order was supported by substantial evidence.

The mother also asserts the court erred by denying her motion to represent herself under the waiver provisions of Welfare and Institutions Code section 317, subdivision (b).¹ We find the court did not abuse its discretion by denying the mother's motion, and affirm the court's orders.

I

FACTS

Prior Opinion

This is the second time we have reviewed this matter. (See *In re M.C.* (Apr. 1, 2010, G042420) [nonpub. opn.] (*M.C. I.*)) We upheld the court's jurisdictional and dispositional findings for M. and Monique (currently ages 16 and 17, respectively), finding that substantial evidence supported removing the children from the mother's custody. "The overall substance of the allegations was the mother's persistent and untreated alcohol abuse and a refusal to acknowledge that her alcohol use was a problem. As noted above, while intoxicated, the mother would sometimes have mood swings, and throw objects at the children and call them names. She also became physically violent on occasion, including an incident in which the mother pulled Monique's hair while in the car and drove erratically. She also had an arrest for driving under the influence. At times, the children have, at a minimum, left the house due to their mother's behavior. [¶] While her daughters are, as the mother points out, teenagers and not small children, they

¹ Subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified.

are nonetheless at a serious risk of harm from the mother's 'anger impulse control issues' and other behavior stemming from her continued and unresolved alcohol abuse. All of the incidents discussed above — throwing objects, pulling Monique's hair, driving while intoxicated, and forcing the children to leave the house — support this conclusion. The overall picture presented here is one of denial and a continuing refusal to accept responsibility for the impact the mother's behavior has on her children, including their physical well-being. Given the facts as a whole, there was substantial evidence from which the court could conclude a serious risk of harm existed. We thus find no error as to jurisdiction." (*M.C. I, supra*, G042420.)

For largely the same reasons, we found the trial court's dispositional orders were also supported by substantial evidence. "Most importantly, the mother's alcohol problem remained untreated, and she continued to deny its existence and impact on her children even after detention. Without acknowledging her alcohol abuse and taking at least beginning steps to address it, there was no hope of change. Instead, the mother continued to blame her problems on everything except alcohol abuse. While this behavior continues, there is no hope at all that the mother can provide her daughters with a safe and stable home, for the same reasons her behavior created a substantial risk of physical harm." (*M.C. I, supra*, G042420.)

Six-Month Review

Prior to the six-month review hearing, the Orange County Social Services Agency (SSA) reported that the mother had regularly attended a substance abuse program. Between July 2009 and February 2010, she had two positive tests for alcohol and she missed eight tests. Her tests were otherwise negative.

In the summer of 2009, the mother was referred for counseling, but she did not enroll, stating that she did not need counseling. In August, SSA referred the mother to a therapist who shared her ethnicity, apparently believing this might help, but the

mother told SSA “she does not like Persian people.” She told the social worker that her daughters were out of control, and that was the problem, not her. After being told that she needed to participate in services to regain custody of her daughters, she finally agreed to attend. The therapist informed SSA that she believed a psychological assessment of the mother’s mental health would be appropriate. Therapy was interrupted when, after two appointments, the mother accused the therapist of being a lesbian and making a pass at her. Unsurprisingly, the therapist declined to continue meeting alone with the mother.

She was referred to a new therapist, Pam Moldauer, and attended four appointments before beginning therapy with the children. Moldauer described joint therapy as intense and said that strong differences of opinion were expressed. The therapist felt that weekly joint therapy would not be productive at that time.

In October, SSA had authorized supervised instead of monitored visits. During the first supervised visit, the mother made Monique cry. Monique told the social worker that she felt intimidated because the mother gave her dirty looks and made rude comments. She also discussed the case, in contravention of the instructions she had been given. The monitor was reinstated. Although two-hour visits were authorized, the visits consistently ended an hour early by mutual agreement between the mother and the girls. The monitor reported that the mother discounted Monique’s opinion during visits.

In December 2009, the mother requested that her counsel be removed. The court held a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118, and concluded the mother’s representation was proper.

Counseling resumed in January 2010, and Moldauer reported the mother and the girls appeared more comfortable. But when the girls discussed their feelings regarding their initial removal from the mother’s care, the mother was argumentative and defensive. Like her previous therapist, Moldauer requested the mother undergo a psychological evaluation.

The mother once again expressed her dissatisfaction with monitored visits, and after a team meeting with the girls and SSA, unmonitored visits were authorized. Monique reported that the first visit went well, but toward the end, the mother said that Monique did not want to return home, and this created an argument.

SSA then authorized the girls to visit the mother at home once the home was approved by SSA. In February, Monique told SSA that she did not want to visit the mother at home. She said that although they were making progress during therapy, the mother continued to berate her during visits. M. confirmed that the mother would “yell and argue” with them during visits, but nonetheless she wanted to visit the mother’s home so she could have sleepovers with her friends without needing SSA clearances, although she admitted she would be returning home for “all the wrong reasons.” Monique stated she was interested in long-term foster care rather than returning home.

In late February, when the social worker contacted the mother about evaluating the home for overnight visits, the mother stated she was “considering giving up on . . . services and dropping the case.” She agreed, however, to have her home evaluated. Later that same day, she called an SSA supervisor and in a “profanity laced rant,” stated she would not allow anyone from SSA into her home. She said SSA had “destroyed” her family and “damaged” her daughters. She also called the social worker and told her that she would not follow up with her services and “you can keep my daughters.”

The next day, again using profanity, she called Moldauer and told her she would not attend therapy again. The same day, the mother called the foster placement and spoke to M., who had left the mother a message asking about the home assessment. The mother’s behavior on the phone was described as “yelling and screaming.” She told M. that “she would never make it” and would not find a job and end up pregnant. The mother left 23 messages on M.’s voicemail, and said that she was “done with them” and they could stay with their foster mother.

The day after the call with M., the mother placed calls to apologize to the social worker, the SSA supervisor and her therapist. During this same week, the social worker attended a therapy session with the mother and the girls. Monique, who had been waiting in the hallway for the social worker to arrive, told the social worker that she could no longer take the mother's insults.

During the therapy session, the mother said that she was dropping the dependency case. She explained that she was very angry because she had spent too much money and time, and that it was SSA's job to fix the problem. M. played the messages the mother had left on her voicemail, which included profanity and swearing directed at her daughters, the foster mother, and everyone involved in the case. The messages belittled both girls and repeated that the mother did not want anything to do with them anymore.

The mother became very defensive, and she yelled at M. to stop playing the messages. She repeated that she would not see her daughters anymore or participate in services. The social worker offered the mother extra services to help her in controlling her anger, but the mother refused. Moldauer opined that no progress was being made in joint therapy, and suggested the mother try individual therapy before trying again. The mother refused, and kept repeating "this is good bye" to the girls, and blamed them for her use of profanity. M. told the mother "be careful what . . . you're saying because people will take it seriously." The mother responded that she was serious and "this is good bye" before gathering her belongings. Monique asked the mother to leave if that was what she wanted, and the mother left the room.

After the mother left, the girls said they had seen this behavior before — the mother would swear at apartment managers, teachers, the parents of their friends, and neighbors. They felt ashamed by her behavior, and stated they enjoyed being in foster care because they had a stable home free of emotional abuse. The social worker reinstated supervised visits, but the girls did not want to visit at the time.

On March 1, the mother did not appear in court for the six-month review hearing. She had called her attorney the week prior, stating she wanted him removed from the case. The next day, she left a message saying that her attorney could appear without her and do whatever he wanted to do. The court denied counsel's request for a continuance, finding the mother had notice and there was no good cause for a continuance. At the conclusion of the hearing, the court found that continued supervision was necessary, reasonable services had been provided and set a 12-month review hearing.

Restraining Order and Section 388 Petition

On April 27, the girls filed an application for a temporary restraining order prohibiting the mother from contacting them. They reported the mother had made threats against them and the foster mother, including the following statements to Monique: "I'm going to bash your head in. I would have M. if it wasn't for your dumbass. I'm going to punch you in the face. I'm going to find out where you live and blood will be everywhere. I'm going to f. . . kill you. . . . I will beat you with a hammer. I'm going to f. . . kill you like you killed me. I'm going to kick your ass. Burn in hell, bitch."

Monique also reported threats against the foster mother, including: "She stole my money. She stole my kids. I will f. . . murder her. . . . I'm going to find out where she lives and f. . . kill her and every mother f. . . in her family even if I have to spend my money on a chainsaw. . . . It would be worth it once I kill her. Blood would be everywhere. I will end her life and hope she burns in hell with you." Monique stated that the majority of the messages were similar, but that some messages were "her just rambling on about killing me It is obvious that she progresses to get more and more drunk . . . so drunk that it is hard to understand what she says."

M. stated: "These threats include bashing our heads into a wall, kicking our 'asses,' and many more physical threats against [the foster mother]. Seeing as though

[sic] she has unexpectedly shown up at my school before, I believed that she would follow through with what she stated in her messages.”

SSA also filed a petition under section 388 to suspend visits because of the mother’s threats to kill them, asking that visits stop until a psychological evaluator and the children’s therapist determined that visits would not be detrimental to them.

On April 27, the court granted both the application for a temporary restraining order and “provisionally” granted SSA’s section 388 petition pending a hearing on May 11. The court also scheduled an order to show cause on the restraining order for the same date.

On April 29, the mother’s counsel filed a motion on the mother’s behalf asking that she be allowed to represent herself. The motion requested that the court consider the motion on May 11 “or as soon as the court can reasonably accommodate said matter.”

On May 11, the court continued the hearing for one week and granted the girls’ request for a continued temporary restraining order. The mother’s counsel did not raise the issue of the mother’s request to represent herself.

May 18-20 Hearing

At the continued hearing, the court considered the girls’ request to make the restraining order permanent and the request for the mother to undergo an evaluation pursuant to Evidence Code section 730. Although the judge specifically asked if there were other requests prior to the first witness being called to testify, the mother’s counsel did not raise the issue of her motion to represent herself.

M. testified first, and after voir dire examination, the court granted her request to testify outside her mother’s presence. She repeated some of the threats the mother had made in the restraining order application, including the mother’s threats to “kick my ass” and “bash my head into a wall.” She believed the mother was capable of

following through because she had shown up at M.'s school previously, even though the mother knew that unmonitored contact was not permitted. M. recounted that she had had four or five "physical fights" with the mother, from the time M. was in the sixth grade. M. stated the mother was the aggressor and would hit first. These incidents included pushing, throwing objects, and pulling her hair. She felt these fights were often the result of the mother's intoxication. M. was fearful and wanted the court to issue the restraining order.

Monique also testified outside the mother's presence. She also reviewed the letter she had written in support of the application for the restraining order. Monique discussed the mother's voicemail messages, which she characterized as "threatening my life, [M.'s] life, [the foster mother's] life, making vulgar — like, threatening us" Monique said the threats were specific and "gruesome." At times the mother would leave Monique 50 or more voicemail messages while intoxicated. She said the messages made her fearful, "because she has threatened me before. And since she does get drunk, she has hit me before." Monique testified she believed the mother would carry out the threats, describing one incident where the mother threatened to hit her and followed through by pulling her hair and hitting her head on a dashboard. Monique was aware that a restraining order would interfere with visitation.

The mother also testified. She denied the allegations in the application for the restraining order, stating that she had never made threats against the children or to the foster mother. She was upset with the allegations her daughters made and claimed she had been misunderstood. She also said that she had difficulty speaking because of dental work. The mother felt the girls were being "pressured to write such a thing." She denied telling the girls that she intended to drop the dependency proceeding at their last therapy session. She claimed that "everything I say and do is usually twist[ed] around to be something . . . very negative and ugly" She denied that she had recently used alcohol.

The mother did admit that she left profanity-laced, ranting messages for SSA personnel. She also admitted leaving SSA a message stating that she had hired a private investigator to follow the girls because she believed they were not sleeping at the foster home and had been sexually promiscuous. The mother said she had “a lot of questions” before she would agree to participate in a Evidence Code section 730 evaluation.

The court heard arguments before ruling. The court then noted: “This is the second time the court has heard evidence in this case with regard to the behavior of mother and her daughters, and this is astounding. I will tell you that the summary of mother’s testimony was essentially every single person has made up something, that everything is twisted around, everybody else has a problem and in fact they are the problem, and that mother is always trying to explain and address the problem. That’s the essential nature of the testimony, which is I’m not doing anything wrong, everybody else is lying, coaching, and causing problems.”

The court did not believe that to be the case, and found too much evidence to consider the mother’s behavior to be a coincidence. The mother’s version of events, in the court’s view, was “simply unbelievable.” The court found the girls “two of the most poised young ladies that I have ever seen. They are articulate, wise beyond their years, extremely parentified, and extremely credible.” The court noted that both had testified that if the mother sought help, they would want to continue seeing her. But in the absence of such help, “[t]he persistent nature of the behavior is simply emotional abuse, and it is damaging. The court can simply not ignore the fact that there is extreme denial on mom’s part” regarding her ongoing issues. The court found the mother’s testimony to be “rambling” and at some times incomprehensible. The court further found that “mom isn’t participating. I don’t know why. Mom was questioning during her testimony what can we do to stop the emotional abuse? Well, it’s not really that difficult. Stop making

phone calls and stop leaving crazy messages . . . that are threatening. These are threatening messages. These are scary. They're abusive. They're dangerous.”

The court entered a permanent restraining order, to be reviewed at the 12-month review hearing on July 8. The court also ordered an evaluation pursuant to Evidence Code section 730.

After the rulings, the mother's counsel raised the issue of the mother's request to represent herself. The court denied the request, finding it would be disruptive to the court proceedings. The court felt that the mother's noncompliance with prior orders, and her “unchecked and . . . escalated” disturbing behavior weighed against the request, and the court was concerned that the mother might disseminate confidential reports.

The mother filed a notice of appeal in June 2010.

II

DISCUSSION

Restraining Order and Visitation

The mother claims that she is not appealing the restraining order, but the order suspending visitation was issued prior to the hearing on the restraining order. There was no such order, however, issued following the May 20 hearing, and the court's April 27 order stated that SSA's section 388 motion was “provisionally” granted “pending” the later hearing date. We construe that “provisional” order as dissolved once the later hearing occurred. Thus, because the May 20 orders do not include any reference to suspending visitation outside the context of the restraining order, we do not find any such order to exist. We therefore review the propriety of the restraining order. Because this is a dependency case, the propriety of issuing the order ultimately overlaps with the question of whether suspending parental visitation is proper.

Section 213.5 permits the juvenile court to issue protective orders to protect dependent children from harassment during dependency proceedings, including a no-

contact order if it is necessary to prevent the “molesting, attacking, striking, sexually assaulting, stalking, or battering the child. . . .”² (§ 213.5, subd. (a).) We shall uphold the court’s ruling on a restraining order if supported by substantial evidence. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-211.)

Visitation is an important part of family reunification plans. Statute provides that “Visitation shall be as frequent as possible, consistent with the well-being of the child.” (§ 362.1, subd. (a)(1)(A).) Subdivision (a)(1)(B) provides, “No visitation order shall jeopardize the safety of the child. . . .”

The mother cites *In re C.C.* (2009) 172 Cal.App.4th 1481, 1491, for the proposition that visitation cannot be terminated unless it jeopardizes a child’s physical safety, not simply her emotional well-being. Other courts have disagreed. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 50 [in determining whether to permit visitation the court may consider “the ‘possibility of adverse psychological consequences of an unwanted visit between [parent and child]’”]; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008 [court may deny parent visitation “if visitation would be harmful to the child’s emotional well-being”].)

Assuming without deciding that visitation can only be suspended when a child’s physical safety is at risk, we have no trouble concluding that standard is met here. “In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact.” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547, 247.) In assessing the evidence, “[a]ll conflicts must be resolved in favor of the

² The term “molesting” in section 213.5 does not only refer to sexual misconduct. “Molest is, in general, a synonym for annoy. The term ‘molestation’ always conveys the idea of some injustice or injury. Molest is also defined as meaning to trouble, disturb, annoy or vex. [Citation.]” (*In re Cassandra B.*, *supra*, 125 Cal.App.4th at p. 212.)

respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact. [Citation.]” (*Ibid.*)

This is not a case involving conflicting inferences. It is simply a case where the trial court found two witnesses, Monique and M., “extremely credible,” and the other witness, the mother, “simply unbelievable.” We are bound by those determinations. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

The court found that the threats were “threatening,” “scary,” “abusive” and “dangerous.” In the context of a mother with a history of placing her daughters at a substantial risk of physical harm, the court’s opinion was well-founded. The specific, detailed language of the threats was also more than sufficient to determine that the physical safety of the girls was at risk. “I’m going to bash your head in. . . . I’m going to punch you in the face. I’m going to find out where you live and blood will be everywhere. I’m going to f. . . kill you. . . . I will beat you with a hammer.” These are not simply idle words or an offhanded threat made in anger. These words show that the mother had at least considered specific ways to physically harm the children.

The mother claims that supervised, monitored visits would not pose a threat to the girls’ safety. We must disagree. Monitored visits do not take place in the presence of anyone necessarily qualified to protect the children’s immediate physical safety. Should the mother decide to carry out her threats, it is probable that she could cause physical harm before being stopped. Given the mother’s “gruesome” (in Monique’s words), repeated and detailed threats, the court correctly concluded that any such risk was too much.

Moreover, the court’s order, on its own terms, was not final. The court stated it intended to review the order in July, and further noted that the girls themselves

wished to resume visits with the mother after she began seeking help. But the court's order, given the facts, was proper and supported by more than substantial evidence.

Self-Representation

The mother next argues the court abused its discretion by denying her request to represent herself in the ongoing dependency proceedings. Section 317, subdivision (b), requires appointment of counsel for an indigent parent or guardian in a juvenile dependency case “unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided in this section.”

A parent's right to self-representation, however, is statutory only; the United States Constitution and the California Constitution do not give a parent the right to self-representation. (*In re A.M.* (2008) 164 Cal.App.4th 914, 923 (*A.M.*); *In re Angel W.* (2001) 93 Cal.App.4th 1074, 1083 (*Angel W.*).)

“[A] parent's request for self-representation in a juvenile dependency proceeding differs from the same request by a criminal defendant in two significant respects. First, as explained, the parent's right of self-representation is statutory, not constitutional, and therefore must be balanced against other parties' rights. Second, the parent's exercise of the statutory right of self-representation could affect the child, who also has rights requiring protection.” (*A.M.*, *supra*, 164 Cal.App.4th at pp. 924-925.) Nonetheless, “the court must respect the right of the parent to represent him- or herself as a matter of individual autonomy and avoid forcing the mentally competent parent to proceed with appointed counsel in the guise of protecting a person who is unskilled in the law and courtroom procedure.” (*Angel W.*, *supra*, 93 Cal.App.4th at p. 1084; see *A.M.*, at pp. 923-924.)

In *Angel W.* the juvenile court had denied the parent's request to represent herself, citing concerns the parent had disrupted, and might continue to disrupt, courtroom proceedings. (*Angel W.*, *supra*, 93 Cal.App.4th at p. 1084.) The appellate

court acknowledged the validity of this concern, but cautioned that “[t]he possibility of disruption or delay . . . exists to some degree with virtually all pro se litigants and the mere possibility alone is not a sufficient ground to deny self-representation.” (*Id.* at p. 1085.)

In *A.M.*, the issue was not a disruptive parent, but one who had sought multiple continuances of the jurisdiction/disposition hearing. As this court explained, *Angel W.* considered the scope of a juvenile court’s discretion to deny a parent’s request for self-representation only in the context of a potentially disruptive parent. (*A.M.*, *supra*, 164 Cal.App.4th at p. 924.) We noted that the “overarching goal” of the juvenile dependency system is the child’s best interests (§ 202), and observed that expeditious resolution is critical to those best interests. (*A.M.*, *supra*, 164 Cal.App.4th at p. 925, citing § 352, subd. (a) [court “shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements”]; see also *In re Celine R.* (2003) 31 Cal.4th 45, 59 [“[c]ourts should strive to give the child this stable, permanent placement . . . as promptly as reasonably possible consistent with protecting the parties’ rights and making a reasoned decision”].)

Accordingly, we held a juvenile court has discretion to deny a request for self-representation “when it is reasonably probable that granting the request would impair the child’s right to a prompt resolution of custody status *or* unduly disrupt the proceedings.” (*A.M.*, *supra*, 164 Cal.App.4th at pp. 925-926.) At any point in the proceedings the court must consider the effect of the request for self-representation on the child’s right to a prompt resolution of the dependency proceedings. (*Id.* at p. 926.)

Given these considerations, we find the court did not abuse its discretion. It was faced with a parent with a well-documented but unacknowledged and untreated substance abuse problem. The mother’s behavior had become so intolerable outside of court that a restraining order was necessary, and the trial court found it proper to examine

the girls outside her presence. She was unable to give direct and simple answers to her counsel's questions, and had to be cautioned on several occasions to let the court rule on objections. The court had every reason to believe that if the mother could not answer a direct question, it was unlikely she would be able to pose questions that would result in admissible evidence, resulting in inevitable delay. Further, the question of the mother's mental state is unclear at this time, opening the prospect of further delays.

Finally, the girls unquestionably have a right to be free from trauma during their testimony. The mother suggests that "an attorney could question" them on the mother's behalf, but that would only create more uncertainty and doubt as to the division of responsibility between the mother and this attorney, potentially creating further delay. Given the totality of the circumstances, we find no abuse of discretion.

III

DISPOSITION

The orders are affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O'LEARY, J.